brought the remainder in notes from England in contravention of the Finance Regulations. Later the Ford was traded in for a Buick, the balance, according to the appellant, being paid for by his wife. But later a Plymouth car was purchased, which according to the appellant was entirely paid for by his wife.

Mr. Morrison, on behalf of the appellant, has argued that the conviction must be quashed upon the ground that if the learned District Judge's mind had not been prejudiced by the admission of the inadmissible evidence of the wife's pecuniary resources, his finding of fact that Lim Chin left the $165 in notes upon the appellant's table might have been different. I do not agree with that argument. It seems to me that the evidence which strictly related to the charge on which the appellant was convicted, was so clear that if there had been no other evidence in the case he must have convicted upon that charge.

Secondly Mr. Morrison argued that the conviction must be quashed because no particulars are contained in the charge upon which the appellant was convicted as is required by section 163 of the Criminal Procedure Code. The charge upon which the appellant was convicted was the alternative charge. Particulars were given in the first charge (of which the appellant was acquitted), in which he was charged with corruptly accepting the Raleigh bicycle on or about the 24th day of July 1949 at Rochore Canal Road. These particulars were not given in the alternative charge although it is to be noted that on 27th January 1951 when the case first came before the Court, the Crown undertook to furnish the particulars. But I have to ask myself whether the omission to furnish particulars has occasioned any failure of justice. Section 166 of the Criminal Procedure Code provides that no error in stating the offence or the particulars and no omission to state them shall be regarded as material unless the accused was in fact misled by such error or omission. The appellant knew that he was being charged with accepting the bicycle as a present, contrary to section 165 of the Penal Code. And whether the offence was technically committed on the 24th of July when the appellant saw the bicycle in the presence of Lim Chin in Rochore Canal Road, or whether it was committed some days later in his office when he allowed Lim Chin to leave the money on the table, does not appear to me to affect what the appellant well knew was the issue in the case, namely, did he pay for the bicycle or did he accept it as a gift without paying for it.

In the result the conviction is upheld. The evidence relating to the wife' resources must be disregarded, and the sentence of imprisonment is quashed. The fine of $1,000 or six months simple imprisonment in default will stand.

Appeal dismissed.

HAROON BIN GURIAMAN
v.
NIK MAH BINTE NIK MAT & ANOTHER.

[Orig. Civ. Juris. (Briggs, J.) June 3, 1951]

[Kota Bharu — Originating Motion No. 8 of 1951]

Land — Sale of land — Equity — Competing equities caveat subsequently registered — Whether person with higher priority entitled to warn it off.

Where competing equities arise, their relative priority inter se at the moment before a caveat is imposed to protect either will be determined by the ordinary rules of equity. If a caveat is then put on to protect that which has the lower priority according to such rules, it may be warned off by the person entitled to the higher priority.

Case referred to :—

(1) *Vallipuram Sivaguru v. Palaniappa Chetty* (1937) M.L.J. 59.

ORIGINATING MOTION.

Parties appeared in person.

The facts appear sufficiently from the judgment.

Briggs, J. : —Mohamed bin Abdul Rahman, the second respondent, is registered as the proprietor of Lot No. 945 in the Mukim of Gading Galoh in the Daerah of Pulai Chondong and was so registered in 1946. On 6th August, 1946, he entered into a written agreement with the applicant, Haroon bin Guriaman, agreeing to sell this land together with two lots, Nos. 472 and 474 in the Mukim of Kerawang, for a sum of $3,000 the receipt of which he acknowledged. He gave a licence to Haroon to go into occupation of the land. He undertook to transfer the land as soon as this became possible on the resumption of normal Land Office work.

On 29th January, 1948, Mohamed entered into another written agreement by which he undertook to sell Lot No. 945 in the Mukim of Gading Galoh to Nik Mah, the first respondent, for $935, $800 of which was paid at the time of the agreement; the remaining $135 was to be paid on presentation of the transfer. Completion was to be on the lifting of the Moratorium. He gave a licence to Nik Mah to go into occupation of the land.

On 27th January, 1951, Nik Mah signed a plaint in Civil Suit No. 9 of 1951 whereby she claimed

against Mohamed specific performance of this agreement. The plaint was filed on 30th January and was served on 18th February on the defendant. He pleaded the earlier agreement, but also admitted the agreement with Nik Mah, and stated that he had entered into it in error without recollecting that the land was included in the earlier agreement. At a later stage he sought to amend this defence so as to plead that he was really the trustee for one Mohamed Rasul, on whose behalf both agreements had been made. The action was heard on 14th March, 1951, and I made an Order for specific performance in favour of Nik Mah with costs. The outstanding sum of $135 was to be paid into Court, subject to set-off of the costs, which were subsequently taxed at $101.50. The balance of $33.50 was duly deposited and stands to the credit of the action. Mohamed failed to execute the necessary transfer as ordered, and a transfer was, in accordance with the terms of the Order, executed by the Registrar on his behalf and was presented for registration. No issue document of title was in existence, the land being held on Settlement Index.

After presentation of the transfer and Order of Court of the 14th March, 1951, it appeared that on 31st January, 1951, Haroon had executed and presented a caveat against Lot. No. 945 claiming an interest under the agreement of 1946. The transfer was therefore not registered. Haroon and Mohamed were admittedly very close friends, and although Haroon was normally stationed at Kemaman he was on leave at Kampong Pulai Chondong, where Haroon lives, at the time when the action was filed. I have no doubt whatever that it was common knowledge in that kampong that Nik Mah had, after numerous demands, filed her action against Mohamed and, although there is no direct admission by Mohamed that he knew of the action before he was served, he stated in argument "I said I was served on the 27th; that may have been when I first heard of the plaint, if the records show I was formally served on 18th February, 1951." I think this is a strong indication that Mohamed knew of the existence of the plaint on the day on which it was signed and before it had been filed in Court. Mohamed admits that he told Haroon about the plaint as soon as he himself had heard of it, and that he asked Haroon not to sue him as he hoped to settle with Nik Mah. Haroon swears that he never heard of the existence of the action until after he had put on the caveat. It may be noted that the same petition writer prepared the plaint and the caveat. It was put to Haroon that it was a very remarkable coincidence that, after some five years delay, he should have imposed the caveat at just that moment, when the action was being filed. He fully appreciated the point and had no answer. He made no suggestion that Nik Mah had had any knowledge of the agreemeet with him when she made her agreement with Mohamed.

Lots 472 and 474 above referred to are held under entry in the Mukim Register, and the Mukim Extracts were handed by Mohamed to Haroon at the time of making the agreement. As regards these, therefore, Haroon took proper precautions, since no transaction adverse to him could have been registered without their production. He was not, however, in any way protected as regards Lot 945. The question is now one of competing equities and Haroon has raised it in a manner which, though not altogether regular, is none the less, I think, effective to enable me to deal with the whole issue. In this Originating Motion he has made both Nik Mah and Mohamed respondents, and has asked me to amend the Order made in Civil Suit No. 9 of 1951 by substituting for my Order for specific performance an order for refund of the purchase price paid by Nik Mah together with the amount provided in her agreement by way of penalty for non-performance. That appears to me sufficiently to raise the issue, "Who is now entitled to be registered as proprietor of Lot 945?".

The law is clear that the prior equity in time, that is to say, Haroon's, must prevail against the later one, Nik Mah's, unless Haroon has been guilty of such negligence as to disentitle himself to rely on his priority in time. If such negligence is proved, the later equity in time will prevail over the earlier one. Apart from the register, and in the absence of any caveat or issue document of title, the only *indicium* of title which can be considered is that of *de facto* possession of the land. Haroon claimed that he had been in possession by his employees from the time of his agreement, and that they had been tapping Lot 945 on his behalf. Nik Mah made a precisely similar claim and I heard evidence on this issue. I need only say that the evidence as a whole satisfies me beyond all doubt that Haroon has never been in possession, and that Nik Mah has been in possession at all material times. It is perhaps not without importance that at or about the time when Nik Mah brought, or contemplated bringing, her action against Mohamed, Haroon objected to her possession and her tappers were forced to stop tapping. This seems to support my previous view that Haroon was well aware of what Nik Mah was doing, and that his imposition of a caveat was merely a counterblast to her action, the launching of which

was within Haroon's knowledge. I think that where a purchaser under an agreement for sale of land does not impose a caveat to protect his interests, does not obtain possession of an issue copy document of title, and does not take physical possession of the land, he is guilty of gross negligence and his equity should be postponed to the equity of a later purchaser of the same land who has taken any one of those steps. On this ground, I have no doubt that Nik Mah's equity should he preferred to Haroon's, subject to the question, "What was the effect of the caveat?".

I think the correct method of approach as regards that is to say that while the failure to impose a caveat may be negligence and, in this respect, both parties were originally equally guilty, the imposition of a caveat when the person imposing it has already knowledge of the contending equity will not necessarily improve his position. I am satisfied that Haroon in fact imposed his caveat only because he knew that Nik Mah was suing for specific performance, and I do not think that a caveat imposed in those circumstances can assist him. The relative priorities of Haroon and Nik Mah had, I think, been settled long before the caveat was imposed. I am of opinion that Nik Mah could successfully take proceedings to warn off the caveat, and am also of opinion that the validity of that caveat is sufficiently before me in these proceedings.

The effect of a caveat as regards priority of competing equities is not altogether a simple question, but the following passages from *Hogg* on *Registration of Title to Land throughout the Empire,* 1920 Edition, are in point :—

"In the common case of a contract for the sale of land, the purchaser has an equitable interest sufficient to support a caveat; if he is not yet entitled to a transfer and has therefore no lien upon the land, he is still entitled to enter a caveat." (p. 185).

"Even if a caveat is valid, it will not be allowed to prevent registration of an interest admittedly prior to the caveator's interest, and may therefore have to be removed altogether."

"Although it has been said that a caveat "operates as notice to all the world" of the equitable interest referred to in it, this opinion is contrary to actual decision, and the better view seems to be that the entry of the caveat merely serves as notice to persons searching the register, the precaution of searching being neglected at their own risk. The caveat, in fact, does not add to, but merely protects, existing rights." (pp. 187-188).

"Notwithstanding differences in the wording of the statutes, and verbal inconsistencies in judicial dicta, the effect and operation of a caveat seem alike in all nineteen jurisdictions." (p. 188).

"As to what a caveat is and does, the result of numerous cases may perhaps be summed up thus: A caveat is in the nature of a statutory injunction, and is a means of conveying notice to persons who propose to deal with the owner that there are other claims affecting the property; in itself a caveat makes a claim or right neither better nor worse, but marks a point of time at which the merits of competing interests may be judicially determined.

As to how competing interests are affected by the entry of a caveat, the result of the cases seems to be as follows: The statutory permission to enter a caveat will be regarded as a substantive addition to the ordinary rules of jurisprudence, and these rules (as thus supplemented) will govern the question of priority of interest; in the event of a complete equality of merit other than priority in time of creation of interest, priority of interest will be given to the person who enters (or is the first to enter) a caveat. That the existence of a caveat is really no more than a circumstance, merely causing the ordinary rules applicable to the question at issue to be supplemented accordingly, is shewn particularly by cases in which the caveator was unsuccessful." (pp. 189-190).

"There seems to be no reported case actually laying down this proposition, which represents the ideal position put by Mr. Thom (Can. Torr. Syst. 398) as being the point where the Australian and Canadian views diverge. But if there be a caveat or caveats in existence, it would seem to be impossible that on a completely even balance of merits any equity should be given priority "independently of the Torrens Act" (Can. Torr. Syst. 399), and thus the prior entry of a caveat would have to be given some weight." (p. 190).

I take the effect of these passages to be that, where competing equities arise, their relative priority *inter se* at the moment before a caveat is imposed to protect either will be determined by the ordinary rules of equity. If a caveat is then put on to protect that which has the lower priority according to such rules, it may be warned off by the person entitled to the higher priority. I think that is the position in this case, and that the better equity is Nik Mah's.

The only local case I can find which has any relevance is *Vallipuram Sivaguru v. Palaniappa Chetty*[1]. It differs widely from this, in that it turned on possession of the issue document of title : but I think the principles which I have acted on in this case accord with those there laid down by the Court of Appeal.

There are, of course, other questions which might arise. Where a gross fraud has been committed, as in this case by Mohamed, in selling the same property to two different people, and where the fraud has apparently been committed on his very good friend and has in no way interfered with the continuance of that friendship, one is tempted to ask whether the document of 1946 really represented a *bona fide* sale, or whether it was part of a long-standing conspiracy between Mohamed and Haroon to effect further sales at a later date, but finally so to manage matters that the money should go to Mohamed and the land to Haroon, the other purchasers being left with neither. There is no doubt that the document was executed in 1946 and is genuine as regards its date, but there is more than a little doubt whether the transaction that it purports to effect was a genuine transaction. Of course, if that

were the situation, Haroon could have no equity whatever. Not only would he be a volunteer, but he would also be coming into equity with unclean hands. It is not, however, necessary for me to make any finding on those lines, since I am satisfied that, even if he acted *bona fide* in the original purchase, his rights must be postponed to Nik Mah's. In view of this I order that Haroon's caveat on Lot 945 be removed and that thereupon the transfer to Nik Mah, if otherwise fit for regisration, be registered. I order also that Haroon do pay to Nik Mah her costs of this motion, but I award no costs to or against Mohamed.

Order accordingly.

MALAYAN THEATRES LTD.
v.
HARDIAL SINGH & THREE ORS.

[Court of Appeal (Brown, Ag. C.J. (Singapore), Foster Sutton, C.J. (F. of M.) and Spenser Wilkinson, J.) July 16, 1951]

[Singapore — Civil Appeal No. 2 of 1951]

Landlord and Tenant — Control of Rent Ordinance, s. 14(1)(m) — Possession — Reasonableness — Alternative accommodation — "Premises" — Construction of Ordinances — Duty of Court in.

The appellants (who were the defendants in the Court below) were statutory tenants of the Theatre Royal. They originally obtained a lease of the premises for one year from the 1st of June 1946. The appellants' manager agreed in evidence that upon the expiration of the lease there was no agreement for a monthly tenancy, and the appellants "just held over". The respondents purchased the theatre for $300,000 on the 5th of August 1948 and have been receiving from the appellants 10 per cent on their capital outlay by way of rent. The respondents' main business is a textile business. But as a side line they import Indian films from India, which they distribute to film exhibitors. They wanted possession of the Theatre Royal in order that they may themselves exhibit the films which they import. The appellants' business is that of film exhibitors. They operated seven other cinemas in Singapore, and were building another at the Naval Base. The learned trial Judge gave possession of the Theatre Royal to the respondents, saying, "Having considered all the facts of this case I am quite satisfied that it is reasonable that the plaintiffs who have been owners of the Theatre Royal since 5th August, 1948, and gave notice to quit at the end of 1948 should be put in possession of it."

The defendants appealed.

Held, allowing the appeal, that although at the trial evidence was led upon the question of reasonableness, and it was clear that the learned Judge applied his mind to that question, it was a question of fact, and was in the discretion of the Judge. But in applying the test of reasonableness all the facts must be taken into consideration, including the alternative accommodation which was available. And if the learned Judge misdirected himself upon the true construction of section 14(1)(m) in its application to business premises, and thus failed to appreciate the true character of the accommodation which the statute required as an alternative to the premises of which the appellants would be deprived by his order, the Court could not be satisfied that such might not also have affected his views on reasonableness. To this extent the question of reasonableness was dependent upon the question of suitable alternative accommodation, and the two questions could not be regarded as separate and distinct.

Cases referred to :—

(1) *Skinner v. Geary* (1931) 2 K.B. 546.
(2) *Reidy v. Walker* (1933) 2 K.B. 266.
(3) *McIntyre v. Hardcastle* (1948) 2 K.B. 82.
(4) *Rhodes v. Cornford* (1947) 2 All E.R. 601.
(5) *National Provident Institution v. Brown* 89 L.J.K.B. at p. 875.
(6) *Lutterell v. Addicott* (1946) 2 All E.R. 625.

CIVIL APPEAL.

F. R. N. H. Massey for the appellants.

Dr. C. H. Withers-Payne for the respondents.

Storr, J. : — The defendants who own and operate a number of cinemas and theatres were the tenants of the Theatre Royal, No. 635 North Bridge Road, Singapore, under an indenture of lease for one year from 1st June, 1946. In that lease there was a clause permitting them to apply for a renewal of the lease for a further 12 months on or before the 31st May, 1947. They did not apply within the time stipulated and the lease was not renewed, but at the end of their term they held over and became the monthly tenants of the then owners. On the 5th of August, 1948, while the defendants were still in possession of the premises as monthly tenants, the plaintiffs bought the Theatre Royal for a sum of $300,000 after the defendants had been offered the theatre at the same price but had not bought it, but were still negotiating. The plaintiffs wanted possession of the Theatre Royal, so that the 1st, 3rd and 4th plaintiffs could exhibit in the name of Gian Singh & Co. of Singapore, of which they are the sole partners, films that would be sent from India by the 2nd plaintiff who is a dealer in Indian films in Bombay. Notice to quit was served on the defendants on the 29th November, 1948, expiring on the 31st December, 1948. The defendants refused to vacate the premises and claimed to be statutory tenants, protected by the Control of Rent Ordinance No. 25 of 1947 (hereinafter referred to as the Ordinance). The plaintiffs also served on the defendants a notice to quit in relation to the statutory tenancy expiring on the 31st May, 1950, and claimed possession of the premises and, as the plaintiffs had accepted rent up to the 30th September, 1950, without prejudice to their notice to quit, mesne profits from the 1st October,